

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>IN RE:</b>	)	
	)	<b>Bankr. No. 17-70045-JAD</b>
<b>MICHAEL DAVID SCOTT,</b>	)	
	)	<b>Chapter 7</b>
<b>Debtor.</b>	)	
	)	<b>Related to ECF #567</b>
	<b>X</b>	
<hr/>	)	
<b>MICHAEL DAVID SCOTT,</b>	)	<b>Adversary No. 17-7004-JAD</b>
	)	
<b>Plaintiff,</b>	)	<b>Related to ECF #'s 18 &amp; 82</b>
	)	
<b>- v -</b>	)	
	)	
<b>COMMONWEALTH OF</b>	)	
<b>MASSACHUSETTS,</b>	)	
	)	
<b>Defendant.</b>	)	
	<b>X</b>	

**ORDER**

The Court held a continued hearing on this 28<sup>th</sup> day of June 2018 on the above captioned Defendant's *Motion to Dismiss*, and upon due consideration of the *Supplemental Motion to Support Claims of Emotional Distress*, the Court determines that the Plaintiff has alleged claims for emotional distress damages such that the matter should proceed past the pleading stage. See Lansaw v. Zokaites (In re Lansaw), 853 F.3d 657 (3d Cir. 2017); In re Wingard, 382 B.R. 892 (Bankr. W.D. Pa. 2008).

It is true that the Defendant has referenced some documents or evidence, which if admissible, cast doubts or weakens the Plaintiff's claim for emotional distress. In this regard, the Defendant appears to be asking that the Court convert the *Motion to Dismiss* into a motion for summary judgment pursuant to Fed.R.Civ.P. 56 and Fed.R.Bankr.P. 7056.

Nonetheless, the Plaintiff has produced some specific record evidence supporting his claim of emotional distress. This Court concludes that the record made to date creates a genuine material dispute of fact. After all, in ruling on a motion for summary judgment, the Court should not be weighing evidence. See Anderson v. Liberty Lobby, 477 U.S. 242, 255 (1986).

Rather, the Court is merely called upon to determine whether there is a material dispute of fact. And as set forth above, there is such a dispute in this case.

*[Remainder of Page Intentionally Left Blank.]*

*[Order Continues on the Following Page]*

For these reasons:

1. The *Motion to Dismiss* filed by the Commonwealth of Massachusetts at ECF# 18 is denied.
2. No action need be taken by the Court presently as to the supplement or supplemental submissions filed by the Debtor/Plaintiff in the main bankruptcy case at ECF#567, and in the above captioned adversary proceeding at ECF#82. However, the parties are instructed to file all future pleadings concerning this adversary proceeding at Adv. Pro. No. 17-7004-JAD.
3. The Defendant is directed to file and serve an answer to the complaint by July 12, 2018. Upon its filing, the Court shall schedule a trial. Discovery is currently open, and shall be completed by the parties by no later than September 12, 2018.

Date: June 28, 2018



Jeffery A. Deller  
Chief U.S. Bankruptcy Judge

cc: Mr. Michael David Scott  
Stephen G. Murphey, Esq.  
James R. Walsh, Esq., Chapter 7 Trustee

FILED  
6/29/18 10:26 am  
CLERK  
U.S. BANKRUPTCY  
COURT - WDPA

In re:  
Michael David Scott  
Debtor

Case No. 17-70045-JAD  
Chapter 7

## CERTIFICATE OF NOTICE

District/off: 0315-7

User: gamr  
Form ID: pdf900

Page 1 of 2  
Total Noticed: 1

Date Rcvd: Jun 29, 2018

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jul 01, 2018.

db +Michael David Scott, 772 Saint Joseph St., c/o FCI Loretto, Loretto, PA 15940-7006

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.  
NONE.

TOTAL: 0

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

**Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: Jul 01, 2018

Signature: /s/Joseph Speetjens

## CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on June 29, 2018 at the address(es) listed below:

Brett L. Messinger on behalf of Counter-Claimant U S Bank National Associates as Trustee For Credit Suisse First Boston Mortgage Securities Corp blmessinger@duanemorris.com, LMtryon@duanemorris.com

Brett L. Messinger on behalf of Defendant US Bank National Association as Trustee blmessinger@duanemorris.com, LMtryon@duanemorris.com

Brett L. Messinger on behalf of Creditor US Bank National Association as Trustee for Credit Suisse First Boston Mortgage Securities Corp. Mortgage Backed Pass Through Certificates Series 2004-AR-7 and Ocwen Loan Servicing, LLC blmessinger@duanemorris.com, LMtryon@duanemorris.com

Brett L. Messinger on behalf of Defendant Ocwen Loan Servicing LLC blmessinger@duanemorris.com, LMtryon@duanemorris.com

Brett L. Messinger on behalf of Defendant U S Bank National Associates as Trustee For Credit Suisse First Boston Mortgage Securities Corp blmessinger@duanemorris.com, LMtryon@duanemorris.com

Brett L. Messinger on behalf of Defendant U.S. Bank National Association as Trustee for Credit Suisse First Boston Mortgage Securities Corp. Mortgage Pass Through Series 2004-AR7 blmessinger@duanemorris.com, LMtryon@duanemorris.com

Brett L. Messinger on behalf of Creditor U.S. Bank, National Association as Trustee Under the Pooling and Servicing Agreement Dated as of May 1, 2006, GSAMP Trust 2006-HE3 Mortgage Pass-Through Certificates Series 2006-HE3 and Ocwen Loan Ser blmessinger@duanemorris.com, LMtryon@duanemorris.com

Brett L. Messinger on behalf of Plaintiff U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2004-AR7 blmessinger@duanemorris.com, LMtryon@duanemorris.com

Denver E. Wharton on behalf of Creditor Khanda, LLC dew@ktwllaw.com, r42123@notify.bestcase.com

Heather A. Sprague on Behalf of the United States Trustee by on behalf of U.S. Trustee Office of the United States Trustee Heather.Sprague@usdoj.gov

James Warmbrodt on behalf of Creditor BANK OF AMERICA, N.A. bkgroup@kmlawgroup.com

James A. Prostko on behalf of Creditor U.S. Bank, National Association, as Trustee, et al... pawb@fedphe.com, james.prostko@phelanhallinan.com

James A. Prostko on behalf of Creditor The Bank Of New York Mellon Trust Company, N.A., et. al. pawb@fedphe.com, james.prostko@phelanhallinan.com

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James R. Walsh on behalf of Trustee James R. Walsh jwalsh@spencecuster.com, trustee@spencecuster.com;kpetak@spencecuster.com;rsnyder@spencecuster.com;skosis@spencecuster.com

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User: gamr  
Form ID: pdf900

Page 2 of 2  
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Date Rcvd: Jun 29, 2018

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

Jeremy J. Kobeski on behalf of Creditor The Bank Of New York Mellon Trust Company, N.A., et al. pawb@fedphe.com  
Jill Locnikar on behalf of Creditor United states of america jill.locnikar@usdoj.gov, patricia.fitzgerald@usdoj.gov;caseview.ecf@usdoj.gov  
Jill Locnikar on behalf of Defendant United States Department of Justice, et al. jill.locnikar@usdoj.gov, patricia.fitzgerald@usdoj.gov;caseview.ecf@usdoj.gov  
Jill Locnikar on behalf of Defendant U.S Department of Education jill.locnikar@usdoj.gov, patricia.fitzgerald@usdoj.gov;caseview.ecf@usdoj.gov  
Jonathan W. Chatham on behalf of Creditor PA Dept of Revenue RA-occbankruptcy7@pa.gov  
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Kevin J. Petak on behalf of Trustee James R. Walsh kpetak@spencecuster.com, mskunta@spencecuster.com;skosis@spencecuster.com;rsnyder@spencecuster.com;gbivens@spencecuster.com  
Kevin Scott Frankel on behalf of Defendant Korde & Associates P C pabk@logs.com  
Kristen D. Little on behalf of Defendant Korde & Associates P C pabk@logs.com  
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Ronald E. Reitz on behalf of Creditor ROSE AKE rreitz@margolisedelstein.com  
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Ronald E. Reitz on behalf of Creditor BONABERI CORPORATION rreitz@margolisedelstein.com  
Ronald E. Reitz on behalf of Plaintiff ROSE AKE rreitz@margolisedelstein.com  
Stephen G. Murphy on behalf of Defendant The Commonwealth of Massachusetts murphys@dor.state.ma.us  
Stephen G. Murphy on behalf of Creditor Massachusetts Department of Revenue murphys@dor.state.ma.us  
Stephen G. Murphy on behalf of Defendant Commonwealth of Massachusetts murphys@dor.state.ma.us  
William E. Miller on behalf of Defendant US Bank National Association as Trustee wmillier@sterneisenberg.com, bkecf@sterneisenberg.com  
William E. Miller on behalf of Creditor U.S. Bank, National Association As Trustee For et al. wmillier@sterneisenberg.com, bkecf@sterneisenberg.com  
William E. Miller on behalf of Creditor U.S. Bank, National Association as Trustee Under the Pooling and Servicing Agreement Dated as of May 1, 2006, GSAMP Trust 2006-HE3 Mortgage Pass-Trough Certificates Series 2006-HE3 C/O Phelan Hallinan wmillier@sterneisenberg.com, bkecf@sterneisenberg.com

TOTAL: 41